

[CR No. 32175, September 17, 2010]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GEORGE ERIC DEL ROSARIO, ACCUSED-APPELLANT.[*]**

Court of Appeals

Before this Court is an appeal^[1] seeking to reverse and set aside the Consolidated Decision^[2] dated November 20, 2007 of the Regional Trial Court, National Capital Judicial Region, Branch 54, Manila, in Criminal Cases Nos. 01-190068 and 01-190069, both entitled "People of the Philippines, Plaintiff, vs. George Eric Del Rosario y Alcaide, Accused," the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered:

1. In Criminal Case No. 01-190068, finding accused George Eric del Rosario GUILTY BEYOND REASONABLE DOUBT of the crime of Homicide, and hereby sentences him to suffer the indeterminate penalty of fourteen (14) years, eight (8) months, and one (1) day of Reclusion Temporal Medium as the maximum, and ten (10) years of Prison Mayor Medium as the minimum, and to indemnify the Heirs of Lauro Buluran in the amount of Fifty Thousand (P50,000.00) Pesos as compensatory damages and the further sum of Fifty Thousand (P50.000.00) Pesos as moral damages;

2. In Criminal Case No. 01-190069, finding accused George Eric del Rosario GUILTY BEYOND REASONABLE DOUBT of the crime of Homicide, and hereby sentences him to suffer the indeterminate penalty of fourteen (14) years, eight (8) months, one (1) day of Reclusion Temporal Medium as the MAXIMUM and ten (10) years of Prison Mayor Medium as the MINIMUM, and to indemnify the Heirs of Rodelio Buluran in the amount of Fifty Thousand (P50.000.00) Pesos as compensatory damages and the further sum of Fifty Thousand (P50.000.00) Pesos as moral damages.

Being a detention prisoner, said accused shall be credited with the duration of his preventive imprisonment under the conditions of Article 29 of the Penal Code.

SO ORDERED".^[3]

The facts are:

On March 2, 2001, two separate Informations for Murder were filed against accused-appellant George Eric del Rosario y Alcaide (del Rosario for brevity) the accusatory portions of which read:

Criminal Case No. 01-190068^[4]

That on or about October 15, 2000 in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully and feloniously, with

intent to kill and with treachery and evident premeditation attack, assault and use personal violence upon the person of LAURO BULURAN y CAPILI, by then and there shooting the latter several times on the different parts of his body with a gun, thereby inflicting upon said LAURO BULURAN y CAPILI gun shot wounds which are the direct and immediate cause of his death thereafter.

Contrary to law."

Criminal Case No. 01-190069^[5]

That on or about October 15, 2000, in the City of Manila, Philippines the said accused, did then and there willfully, unlawfully and feloniously, with intent to kill and with treachery and evident premeditation, attack, assault and use personal violence upon the person of RODELIO BULURAN y CAPILI, by then and there shooting the latter on the chest with a gun, thereby inflicting upon said RODELIO BULURAN y CAPILI gun shot wound which is the direct and immediate cause of his death thereafter.

Contrary to law."

On December 11, 2001, accused-appellant del Rosario assisted by counsel pleaded not guilty to both charges.^[6] After the pre-trial conference, trial ensued.^[7]

The prosecution presented Perlita Buluran, Mercedita Buluran, Marilyn Buluran-Andrada, Danilo Manalo, SPO2 Diomedes Labarda, P. Insp. Mario Prado and PNP Medico-Legal Officer Dr. Romeo Salen.

Perlita Buluran (Perlita for brevity) testified that: she is the widow of the victim Lauro Buluran (Lauro for brevity); on October 15, 2000 at around 7:00 o'clock in the evening, she and her husband Lauro were conversing outside their house together with their son her brother in-law Ernesto Buluran (Ernesto for brevity); after a while, she and her sister-in-law Marilyn saw accused-appellant del Rosario at the corner of Mata St. holding a gun, shouting and challenging anyone to a fight by saying "Whoever is brave enough, get out of the house!"; Ernesto told his brother Lauro to go inside and call for police assistance which the latter did; when Lauro went back, Ernesto asked him if he called the police and the former just nodded and went back to his seat while accused-appellant del Rosario continued with his actions; however, no police arrived; Ernesto asked accuse-appellant del Rosario who his enemy was and why was he cursing; accused-appellant del Rosario went near them and poked a gun at them; however, her "kumpare" Danilo Manalo (Mang Danny for brevity) tried to pacify accused-appellant del Rosario and said, "Erie, I am your Mang Danny, what is your problem?"; thereafter, they all stood up and she gave her son to her sister-in-law because accused-appellant del Rosario was pointing his gun at them while her husband went inside the house of his brother Pedro Buluran; they all went inside the house, but her husband took a pail and went to the rear side of a parked jeepney to seek cover; when accused-appellant del Rosario saw her husband, he shot him four (4) times; the first shot hit her husband in the chest so her husband crawled under the jeep to seek cover, but accused-appellant Eric approached him and shot him several times more; at that time, her sister-in-law was clutching her while she was trying to escape from her grasp; her sister-in-law told her not to go near Lauro but she went to her husband anyway; she

held Lauro and glanced at her back and saw accused-appellant del Rosario still holding his gun; she got really scared and just sat on the-ground; at that time, she saw her brother-in-law Rodelio Buluran (Rodelio for brevity) hiding at the back of a drum beside their house; Rodelio stood up and tried to go inside the house, at that precised moment he was also shot by accused-appellant del Rosario.^[8]

On cross-examination, she stated that: her husband was a TV and beta technician and had a shop inside their house; it was already 7:00 o'clock in the evening when the incident happened; she was with her sister-in-law, Marilyn, brother-in-law Ernesto and Mang Danny when the incident happened; Mang Danny was a close friend of her husband; they had just started drinking when they saw accused-appellant del Rosario challenging anybody to a fight; they saw him cock his gun three times so Ernesto told her husband Lauro to call for police assistance; Lauro went inside the house of Ernesto to call for police assistance, after which, he went back and rejoined their group; accused-appellant del Rosario was then still at the street corner and continuously challenging anyone to a fight, so Mang Danny tried to pacify accused-appellant del Rosario by saying "I am your Mang Danny, what is your problem?"; Ernesto asked accused-appellant del Rosario, "Eric, who is your enemy? Whom are you quarreling? Why are you cursing?"; accused-appellant del Rosario did not answer, instead he went near them and poked a gun at them; Lauro stood up, went beside the house to get a pail and hid at the back of the jeep; and, he used the pail as a shield.^[9]

Mercedita Buluran testified that: she is the wife of the victim Rodelio Buluran; on the night of October 15, 2000, she and her husband were cleaning their house when all of a sudden, they heard gunshots; they went outside to find out what was happening; they saw accused-appellant del Rosario shooting her brother-in-law-Lauro; Rodelio hid beside a drum and saw accused-appellant del Rosario still shooting Lauro even when the latter was already under the jeepney; when Rodelio stood up, he was also shot by accused-appellant del Rosario in the throat which caused his death; they were able to bring Rodelio to the hospital but he was already dead; and Lauro also died.^[10]

Marlyn Buluran-Andrada testified that: on October 15, 2000 at around 7:00 o'clock in the evening she was infront of her brother Lauro's house located at 1685 Panday Pira, Tondo, Manila; she, together with her brothers Larry, Bernie, Ernesto and the wife of her nephew were conversing with each other when suddenly, they saw accused-appellant del Rosario holding a gun, cursing and looking for trouble; her elder brother asked accused-appellant del Rosario "Who are you fighting?"; accused-appellant del Rosario immediately approached them and pointed the gun at them so she stood up and brought their nephews and nieces and her children inside the house; when they were inside, she heard several gunshots; she cried because her sister-in-law Perly, brother Lauro and Mang Danny were left outside while her brother Rodelio was inside his own house, cleaning; after more than a minute, and when it was already silent, she went outside the house and saw accused-appellant del Rosario, who was only three (3) steps away from her, shooting Rodelio at the neck; her brother Lauro was already sprawled near the jeepney; she was hysterical and kept on crying, so she went again inside the house; after regaining her composure, she went outside and saw her brother Rodelio's blood in front of their house; on the other hand, her brother Lauro was being lifted and placed inside the jeepney; both of her brothers were brought to the hospital in different vehicles; she

followed them and when she arrived at the hospital, her brothers were already dead and placed in the morgue.^[11]

On cross-examination, she testified that: on the night of October 15, 2000, she, together with her brothers Lauro and Ernesto, Danny Manalo, Ate Perly, her nephews Ranel and Mamer and her cousin's wife Apple were talking with each other outside their house; her nephews were from Bulacan. on vacation her brothers and Mang Danny started drinking at around 6:00 o'clock in the evening when the incident happened after an hour, and her brothers just consumed one bottle of beer each; at past 7:00 o'clock in the evening, accused-appellant del Rosario went berserk at the store of Enyang Fortun; he was cursing everyone when his brother Ernesto asked him "Who are you shouting at and why are you cursing?"; accused-appellant del Rosario ran towards them and pointed his gun and yelled "Ano, ano, putang ina mo!"; her brother Ernesto stood up and also cursed accused-appellant del Rosario by saying "Tarantado!"; Mang Danny tried to pacify accused-appellant del Rosario by saying "Eric, ako si Mang Danny mo."; her sister-in-law Perlita embraced her brother Ernesto and asked him to go inside the house; she brought her children and her nephews inside the house; she did not see the actual shooting of his brother Lauro; she can no longer recall how many shots were fired because she was so afraid; not long after she heard continuous gunfire, she went out to see what happened and saw her brother Rodelio hiding at the back of a drum; accused-appellant del Rosario shot her brother Rodelio only once.^[12]

Danilo Manalo testified that: on October 15, 2000, at around 6:15 o'clock in the evening, he visited his relatives in Panday Pira St., Tondo, Manila, and his friends including Lauro who was the godfather of his child; they were together at around 6:00 to 7:00 o'clock in the evening having a conversation and laughing at the same time when suddenly, accused-appellant del Rosario went outside his house challenged them; he knows accused-appellant del Rosario because he is the son of his "kumpadre"; accused-appellant del Rosario always carries a gun because he is a police officer, and at that time he was carrying a gun; accused-appellant del Rosario was shouting and saying "Lumabas kayo dyan kung sino man ang matapang!"; Ernesto Buiuran, brother of Lauro, told the latter to call the police from Precinct 1; Lauro stood up and went inside the house of his brother who had a telephone, but he does not know if he was able to call the police; Lauro returned and sat in front; accused-appellant del Rosario continued shouting prompting Ernesto to react and told accused-appellant del Rosario, "Eric, what's your problem? Why are you making trouble here?"; accused-appellant del Rosario pointed the gun at them but did not direct it to any person in particular; he stood up and approached accused-appellant del Rosario in order to pacify him; he told him "Eric, si Mang Danny mo ito.", but accused-appellant del Rosario told him not to meddle; his companions already scampered while accused-appellant del Rosario kept parrying him; he saw Lauro beside the jeepney and he was the first one who got shot by accused-appellant del Rosario; he was only a meter away from accused-appellant del Rosario when the latter shot Lauro who also about one meter from him; when he heard the gunshot, he shouted and told accused-appellant del Rosario to stop; his brother who was in the store at the time told him, "Danny, layo diyan, huwag kang umawat, huwag kang makialam diyan, baril yan."; he stepped aside near the door and stayed there; he heard several gunshots more and there was shouting, screaming, throwing of stones, and commotion; there were at least eight (8) gunshots; later, the mother of accused-appellant del Rosario came because there was nobody who had the guts

pacify him; he was at his brother's store when the mother arrived and he could not do anything because he was shocked; he heard that his friend Lauro was lying on the ground and must be brought to the hospital so he boarded the jeepney and asked the people to bring the victim to Mary Johnston Hospital; and, it was only in the hospital where he learned that his friend was already dead.^[13]

On cross-examination, he stated that: Lauro was the godfather of his son; he executed a statement and gave the same to the former lawyer of the victim's family but he did not sign the same; part of his statement reads: "Ay sumigaw din si Onyo Buluran sa mga wikang "HOY PUTANG INA MO ERIC, HUWAG KANG MAGPAANDAR DITO."; when accused-appellant del Rosario was shouting, cursing and challenging everybody to a fight, he was not directing the same to any person in particular; however, when Onyo Buluran shouted back, that was the time that accused-appellant del Rosario pointed his gun at them; he raised his hand and tried to pacify accused-appellant del Rosario, however, there was already an exchange of heated words and throwing of bottles, but there was no physical fighting yet; and, it was only after the shooting incident that he saw the mother of accused-appellant del Rosario.^[14]

SPO2 Diomedes Labarda testified that: he has been with the Western Police District since 1989; on October 15, 2000, he was on duty when at around 7:15 o'clock in the evening a guard of Mary Johnston Hospital called to report about a shooting incident and the victims were brought there; he went to the hospital to investigate the case; when he arrived at the hospital, the guard told him that the victims were already in the morgue; the guard also said that one of the victims of the shooting incident, a certain Dan Christopher Mejia, was in the emergency room; he was not able to talk to Mejia because he was in critical condition; however, he examined the bodies of the victims, Lauro Buluran and Rodelio Buluran; Lauro sustained gunshot wounds on the abdomen while Rodelio sustained gunshot wounds on the right eye, two on the left arm and one in the abdomen; after the examination, at around 7:30 p.m., he went to the crime scene; there were splotches of blood but there was no evidence recovered like slugs of the bullet shells used; some of the bystanders told him that some of the evidence were allegedly taken by a policeman; however, upon investigation at the police station, the police officers told him they did not recover any evidence; he also talked to some of the witnesses at the crime scene and Barangay Chairman Espiritu told him that the suspect was accused-appellant Eric del Rosario; when they went to the house of accused-appellant del Rosario, it was closed and they were not certain if he was there; they knocked at the door but no one answered; the Barangay Chairman told him that one of the victims was brought to the Jose Reyes Hospital, so, he proceeded there and found one of the victims, Rodolfo Danan, who could not talk because he was also in critical condition; based on his investigation, the suspect, allegedly high on drugs and drunk, was seen by bystanders at around 7:15 o'clock in the evening having an argument with his brother; somebody told them "Hoy, wag kayong maingay!", after which, he shot the victims, Buluran brothers, and fired indiscriminately hitting bystanders Christopher Mejia and Rodolfo Danan; after going to the Jose Reyes Hospital, he went back to the office and prepared his report; Chief Inspector Juanito Taluban instructed them to verify the identity of accused-appellant del Rosario if he is indeed a policeman, so they went to the PNP SAF Headquarters at Camp Bagong Diwa; one of the personnel at the HRD told them that indeed accused-appellant del Rosario was a policeman but was dismissed from the service on March 27, 2000 under SO No. 232 dated April 3,